

Practitioner's Docket No. 1582.34

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Junya WATABE et al.

Application No.: 10/775,862

Group No.: 1755

Filed: 02/10/2004

Examiner: C. M. Koslow

For: ELECTROLUMINESCENT PHOSPHOR AND ITS PRODUCTION METHOD

SENT BY FAX TO 571-273-6500

Mail Stop 16 (Attn: Refund Branch)
Director of the US Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REFUND
(37 C.F.R. § 1.28(a))

I. BASIS OF REQUEST FOR REFUND

The above-referenced application was deemed abandoned due to failure to respond to an office action. Applicant filed a petition to withdraw the holding of abandonment dated November 14, 2005 for failure to receive the office action. The petition was filed on November 15, 2005. A response to the office action was filed on December 28, 2005, as recommended by the petitions office.

On January 19, 2006, Petition Examiner Brian Hearn issued a ("no-fee") decision dismissing the petition filed on November 15, 2006. A petition fee of \$400.00 was nevertheless taken from the undersigned deposit account on November 17, 2005.

On January 25, 2006, the undersigned filed a request to reconsider the decision to dismiss the petition of November 15, 2005 or in the alternative to treat the matter as a petition to revive the application for unintentional abandonment. With the petition, the undersigned filed a Request for Continued Examination, a requirement to accompany the petition.

The petition fee of \$1500.00, together with the RCE filing fee of \$790.00 was taken from the undersigned representative's deposit account on January 27, 2006.

On May 3, 2006, Petition Examiner Brian Hearn issued a ("no-fee") decision treating the matter as a reconsideration request in lieu of a petition to revive. He granted the original petition. He notes that the office action need not be re-mailed as a proper response was filed with the examiner to expedite the prosecution of the case. This response would have been a non-fee response. So the RCE is also not necessary as the matter was not treated as a petition to revive.

II. REFUND REQUEST

This request for refund is made within two months of the date of the decision of Petition Examiner Brian Hearn. Accordingly, it appears that where Mr. Hearn made 2 non-fee decisions and that the RCE and Petition Fee for unintentional abandonment was deemed not required, total fees paid for which the undersigned representative may be entitled to a refund are:

Request for Refund--page 1 of 2

Initial Petition Fee to Withhold Abandonment	\$ 400.00
Petition to Revive for Unintentional Abandonment	\$1500.00
<u>RCE Filing Fee</u>	<u>\$ 790.00</u>
Total	\$2690.00

III. FEES PAID FOR WHICH REFUND REQUESTED AMOUNT OF REFUND REQUESTED

\$ 2690.00

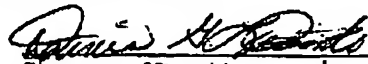
TOTAL REFUND REQUESTED \$ 2690.00

IV. MANNER OF REFUND

Please make refund by crediting Deposit Account No.: 503368.

Date: 5/16/06

Reg. No.: 40,693
Tel. No.: 727-943-9300
Fax no.: 727-943-9002
Customer No.: 24040



Signature of Practitioner
DENNIS G. LAPOINTE
LAPOINTE LAW GROUP, PL
P.O. BOX 1294
TARPON SPRINGS, FL 34688

Enclosures: Petition Office Decisions of May 3, 2006 and January 19, 2006
Deposit Account Statements for November 2005 and January 2006

Request for Refund—page 2 of 2



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

⑤ 1582.34

DENNIS G. LAPOINTE
LAPOINTE LAW GROUP, PL
PO BOX 1294
TARPON SPRINGS FL 34688-1294

COPY MAILED

MAY 03 2006

OFFICE OF PETITIONS

In re Application of:

Watabe et al.

Application No. 10/775,862

: ON PETITION

Filed: February 10, 2004,

Docket No.: 1582.34

This is a decision on the renewed petition filed January 25, 2006, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment.

The petition is granted.

The supplemented showing is sufficient to establish that the Office action of April 7, 2005, was not received at the address to which it was mailed. As such the holding of abandonment is withdrawn and this application is recognized as not abandoned in the first instance.

Since applicant has also prepared a reply to the non-received Office action it not necessary for the Technology Center to re-mail the office action.

This application is being to the Technology Center to consider the reply to the Office action. The delay in treating this petition is regretted.

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-3217.

Brian Hearn

Brian Hearn
Petitions Examiner
Office of Petitions



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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DENNIS G. LAPOINTE
LAPOINTE LAW GROUP, PL
PO BOX 1294
TARPON SPRINGS FL 34688-1294

COPY MAILED

JAN 19 2006

OFFICE OF PETITIONS

In re Application of:
Watabe et al.
Application No. 10/775,862
Filed: February 10, 2004,
Docket No.:1582.34

ON PETITION

This is a decision on the petition filed November 15, 2005, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment.

The petition is dismissed. Any request for reconsideration of this decision must be filed within TWO MONTHS of this mailing. See 37 CFR 1.181(g). Extensions of this period under 37 CFR 1.136(a) are not available.

This application apparently became abandoned for failure to reply to the Office action of April 7, 2005, which set a shortened statutory period for reply of three months. As no reply was received and no extensions of time were received, the application became abandoned at midnight July 7, 2005.

Petitioner requests withdrawal of the holding of abandonment on the grounds that the Office action was never received at either the [obsolete] address to which it was mailed: Mason Law 17757 US 19 North Suite 500, Clearwater Florida, ("Mason") or at the above-captioned address which became effective January 1, 2005. Petitioner contends that a request for a change of correspondence address herein had been presented to the USPTO Electronic Business Center ("EBC") for association with customer number 24040 in late December 2004. Petitioner supplies copies of docket records where the non-received Office action would have been entered had it been received and statements from both firms that a review of the file jacket and docket records at both locations establishes that the last communication received from the USPTO for this application was a Notice Of Missing Parts that was replied to on May 14, 2004.

Initially, the Office action which was mailed to Mason, notwithstanding petitioner's assertion that a change of address was sent to the EBC in late December of 2004, actually appears to have

Application No. 10/775,862

Page 2

been mailed to the correct address. The undersigned has contacted the EBC for assistance in this matter. The EBC did receive 4 spreadsheets for customer number 24040 in late November and December of 2004, but is unable to find any spreadsheet listing 10/775,862. The spreadsheets were received November 29, 2004, December 15, 2004, and 2 were received on December 23, 2004, that had reports sent to counsel on January 13, 2005, January 20, 2005, February 2, 2005, and March 1, 2005, respectively. EBC has also confirmed that no notification was sent to counsel which indicated that a requested change of address for customer number 24040 that referenced this application could not be processed. Therefore, a copy of the spreadsheet that counsel sent to the EBC in late December 2004, that included this application number is requested for any renewed petition.

Accordingly, a review of the written record indicates no irregularity in the mailing of Office action of April 7, 2005, and in the absence of any irregularity there is a strong presumption that the Office action was properly mailed to counsel at the Mason address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must consist of:

- (1) a first-hand statement from the practitioner stating that the action was not received by the practitioner,
- (2) his attestation to the fact that a search of the file jacket and docket records indicates that the Office action was not received, and
- (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in the practitioners' statement. See MPEP 711.03(c) subsection I.

It is further not clear that a copy of the docket records has been supplied. That is, the photocopies supplied from both addresses appear to actually correspond to the electronic *file jacket* records that are strictly limited to papers and tasks for this application, and are not indicative of all correspondence received at Mason or counsel's current address with a few days of the mailing of the office action of April 7, 2005. Further, the statement of Ms. Diane Miller is to the effect that any correspondence for this application received at Mason on and after the January 1, 2005, restructuring would have been re-mailed to counsel at the above-captioned address. Ms. Miller does not state that correspondence for counsel received at Mason on or about April 7, 2005, would also have been entered into the Mason file jacket and docket records. Thus the absence of any entry for this application in either the file jacket or, even if shown, the docket records, for this application at Mason is not dispositive. There is not adequate proof on non-receipt at Mason, and the Miller declaration, coupled with the showing at the above-captioned address also raises the possibility that the correspondence could have been lost either at Mason or in the remailing to the above-captioned address after its receipt at

Application No. 10/775,862

Page 3

Mason. It remains petitioner's burden to adequately establish non receipt of the April 7, 2005, Office action at the Mason address to which the correspondence was correctly mailed.

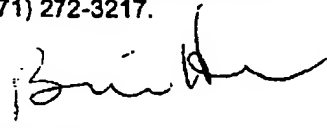
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Randolph Building 401 Dulany Street
Alexandria, VA 22314;

By fax: (703) 872-9306
ATTN: Office of Petitions

Telephone inquiries related to this communication should be directed to the undersigned at (571) 272-3217.


Brian Hearn
Petitions Examiner
Office of Petitions

Deposit Account Statement

Page 1 of 2


**United States
Patent and
Trademark Office**
**Deposit Account Statement**

Requested Statement Month: November 2005
 Deposit Account Number: 503368
 Name: LAPOINTE LAW GROUP, PL
 Attention: DENNIS G LAPOINTE
 Address: P O BOX 1294
 City: TARPON SPRINGS
 State: FL
 Zip: 34688-1294
 Country: UNITED STATES OF AMERICA

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
11/01	23	10554454	3859.015	2631	\$150.00	\$7,794.00
11/01	24	10554454	3659.015	2633	\$100.00	\$7,694.00
11/01	25	10554454	3859.015	2642	\$200.00	\$7,494.00
11/01	26	10554454	3659.015	2615	\$225.00	\$7,269.00
11/01	27	10554454	3659.015	2614	\$200.00	\$7,069.00
11/03	2	10471213	3659.012	2251	\$60.00	\$7,009.00
11/03	40	E-REPLENISHMENT		9203	\$4,000.00	\$11,009.00
11/03	348	5288221	1598.4	1553	\$3,800.00	\$7,209.00
11/03	347	5288221	1598.4	1556	\$130.00	\$7,079.00
11/09	49	60733833	4039.1	2005	\$100.00	\$6,979.00
11/10	65	11269110	2902.3	2011	\$150.00	\$6,829.00
11/10	66	11269110	2902.3	2111	\$250.00	\$6,579.00
11/10	67	11269110	2902.3	2311	\$100.00	\$6,479.00
11/10	103	11269357	859.53	2011	\$150.00	\$6,329.00
11/10	104	11269357	859.53	2111	\$250.00	\$6,079.00
11/10	105	11269357	859.53	2311	\$100.00	\$5,979.00
11/14	45	E-REPLENISHMENT		9203	\$4,000.00	\$9,979.00
11/14	213	11270847	3560.004	2011	\$150.00	\$9,829.00
11/14	214	11270847	3560.004	2111	\$250.00	\$9,579.00
11/14	215	11270847	3560.004	2311	\$100.00	\$9,479.00
11/16	381	29242470	3694.021	2012	\$100.00	\$9,378.00
11/16	382	29242470	3694.021	2112	\$50.00	\$9,329.00
11/16	383	29242470	3694.021	2312	\$65.00	\$9,264.00
11/16	464	29242470	3694.021	1464	\$130.00	\$9,134.00
11/17	4	10775862	1582.34	1462	\$400.00	\$8,734.00
11/18	54	11274736	3780.002	2011	\$150.00	\$8,584.00
11/18	55	11274736	3780.002	2111	\$250.00	\$8,334.00

Deposit Account Statement

Page 1 of 2


**United States
Patent and
Trademark Office**
**Deposit Account Statement**

Requested Statement Month: January 2006
Deposit Account Number: 503368
Name: LAPOINTE LAW GROUP, PL
Attention: DENNIS G LAPOINTE
Address: P O BOX 1294
City: TARPON SPRINGS
State: FL
Zip: 34688-1294
Country: UNITED STATES OF AMERICA

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
01/03	26	E-REPLENISHMENT		9203	-\$4,000.00	\$7,180.00
01/03	172	5836826	637.14	2552	\$1,150.00	\$8,030.00
01/05	285	29242470	3694.021	8021	\$40.00	\$5,990.00
01/06	25	60756123	859.55	2005	\$100.00	\$5,890.00
01/06	35	29213538	3629.002A-.002B	1504	-\$300.00	\$6,190.00
01/06	448	PCT/IB05/02732	3119.2APCT	1605	\$600.00	\$5,590.00
01/06	449	PCT/IB05/02732	3119.2APCT	1705	\$155.00	\$5,435.00
01/09	17	29213547	3629.002A	2502	\$400.00	\$5,035.00
01/09	18	29213547	3629.002A	8001	\$9.00	\$5,026.00
01/09	19	10667618	3245.006	2501	\$700.00	\$4,326.00
01/09	20	10667618	3245.006	1504	\$300.00	\$4,026.00
01/09	21	10667618	3245.006	8001	\$9.00	\$4,017.00
01/09	44	11326051	4052.1	2011	\$150.00	\$3,867.00
01/09	45	11326051	4052.1	2111	\$250.00	\$3,617.00
01/09	46	11326051	4052.1	2311	\$100.00	\$3,517.00
01/10	41	E-REPLENISHMENT		9203	-\$3,000.00	\$6,517.00
01/10	133	10277841	3780.003	8021	\$40.00	\$6,477.00
01/10	138	11037700	3780.003	8021	\$40.00	\$6,437.00
01/11	281	11315841	4046.2	8021	\$40.00	\$6,397.00
01/12	11	10296466	3659.004	1501	-\$1,400.00	\$7,797.00
01/12	12	10296466	3659.004	2501	\$700.00	\$7,097.00
01/17	5	10919782	859.50EPO	2202	\$50.00	\$7,047.00
01/17	8	10471213	3659.012	2251	-\$60.00	\$7,107.00
01/17	42	PCT/US06/00804	3780.007PCT	1601	\$300.00	\$6,807.00
01/17	43	PCT/US06/00804	3780.007PCT	1603	\$300.00	\$6,507.00
01/17	44	PCT/US06/00804	3780.007PCT	1702	\$1,086.00	\$5,421.00
01/17	45	PCT/US06/00804	3780.007PCT	8007	\$20.00	\$5,401.00

<https://ramps.uspto.gov/eram/Controller.jsessionid=ramps-10300-46d4%3A4469c18a%3A...> 5/16/2006

Deposit Account Statement

Page 2 of 2

01/17 190 60756123	859.55	8021	\$40.00	\$5,361.00
01/18 153 10902983	3899.002	2501	\$700.00	\$4,661.00
01/18 154 10902983	3899.002	1504	\$300.00	\$4,361.00
01/18 155 10902983	3899.002	8001	\$9.00	\$4,352.00
01/20 186 29252065	3907.002	2012	\$100.00	\$4,252.00
01/20 187 29252065	3907.002	2112	\$50.00	\$4,202.00
01/20 188 29252065	3907.002	2312	\$65.00	\$4,137.00
01/23 7 11112541	3780.007	8021	\$40.00	\$4,097.00
01/25 71 E-REPLENISHMENT		9203	-\$4,000.00	\$8,097.00
01/27 20 10775862	1582.34	1453	\$1,500.00	\$6,597.00
01/27 57 10775862	1582.34	1801	\$790.00	\$5,807.00

PETITION
ACE

START	SUM OF	SUM OF	END
BALANCE	CHARGES	REPLENISH	BALANCE
\$3,180.00	\$10,133.00	\$12,760.00	\$5,807.00

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Note: No change from submission of 12/28/05,
except resubmitted as RCE with Petition.

ATTORNEY DOCKET NO.: 1582.34
CUSTOMER NO.: 24040



PATENT


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Junya WATABE et al.)
S.N.: 10/775,862) Examiner: C. M. Koslow
Filed: 10 Feb 2004) Art Unit: 1755
For: Electroluminescent Phosphor and Its)
Production Method)

Certificate of Express Mail Under 37 C.F.R. 1.10

"Express Mail" mailing label number: EQ 050229122 US
Date of Deposit: 25 JAN 2006

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.


Dennis G. LaPointe

REQUEST FOR CONTINUED EXAMINATION
UNDER 37 CFR 1.114

M/S: Box RCE (FEE)
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the (NON-FINAL) Examiner's Action mailed April 7, 2005 but never received by applicant, and subsequently declared abandoned for which a Petition is pending with the Petitions Branch, the above-identified patent application is amended as follows:



11-16-05

D-C
ZRW

Practitioner's Docket No. 1582.34

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Junya WATABE et al.

Application No.: 10/775,862

Group No.: 1755

Filed: 02/10/2004

Examiner: C. M. KOSLOW

For: ELECTROLUMINESCENT PHOSPHOR AND ITS PRODUCTION METHOD

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION TO WITHDRAW HOLDING OF ABANDONMENT -
NONFINAL OFFICE ACTION NOT RECEIVED

1. I hereby petition to withdraw the holding of abandonment in this case, on the basis that the Office Action forming the basis of the abandonment was not received.
2. I hereby state:
 - (a) The Office Action indicated, as mailed on April 7, 2005, was not received. Examiner Koslow telephoned the undersigned representative on November 14, 2005 and asked if the application had been abandoned. The examiner confirmed that the office action was mailed to Mason Law, PL at 17757 US 19 North, Suite 300, Clearwater, Florida. A review of the file jacket and docket record at both Mason Law and LaPointe Law

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

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G deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

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37 C.F.R. § 1.10*

X as "Express Mail Post Office to Addressee"

Mailing Label No. ED 868075936 US (mandatory)

TRANSMISSION

G facsimile transmitted to the Patent and Trademark Office, (703) _____

11/17/2005 NGUYEN1 00000003 503368 10775862

01 FC:1462

400.00 DA

Date: 11/15/05

Signature

Robin Dee Carter

(type or print name of person certifying)

* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment calculations.

Petition to Withdraw Holding of Abandonment—Office Action Not Received—page 1 of 3

Adjustment date: 06/12/2006 SDIRETA1
11/17/2005 NGUYEN1 00000003 503368 10775862
01 FC:1462 400.00 CR



Practitioner's Docket No. 1582.34

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor's application of: WATABE et al., Junya

Application No.: 10/775,862

Group No.: 1755

Filed: 02/10/2004

Examiner: C. M. Koslow

For: ELECTROLUMINESCENT PHOSPHOR AND ITS PRODUCTION METHOD

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

PETITION FOR REVIVAL OF AN APPLICATION
FOR PATENT ABANDONED UNINTENTIONALLY UNDER
37 C.F.R. § 1.137(b)

AND ALTERNATIVELY

RECONSIDERATION OF DISMISSAL OF PETITION TO WITHDRAW HOLDING OF
ABANDONMENT - NONFINAL OFFICE ACTION NOT RECEIVED

1. This application became abandoned on October 7, 2005.
2. This application became abandoned because the failure to prosecute was an unintentional delay caused by the non-receipt of an office action to the undersigned representative. The entire delay in filing the required reply from the due date until the filing of this petition was unintentional (37 C.F.R. § 1.137(b)(3)). Please see explanation that the office action was simply never received in the mail.

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

G deposited with the United States Postal Service in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

G with sufficient postage as first class mail.

37 C.F.R. § 1.10*

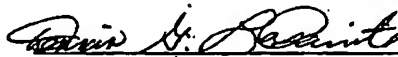
X as "Express Mail Post Office to Addressee"

Mailing Label No. EQ 050229122 US (mandatory)

TRANSMISSION

G facsimile transmitted to the Patent and Trademark Office, (703) _____

Date: 1/25/06


Signature

Dennis G. LaPointe

(type or print name of person certifying)

01/27/2006 LWONDIM1 00000017 503368 10775862

01 FC:1453 1500.00 DA

* Only the date of filing (' 1.6) will be the date used in a patent term adjustment calculation, although the date on any certificate of mailing or transmission under ' 1.8 continues to be taken into account in determining timeliness. See ' 1.703(f). Consider "Express Mail Post Office to Addressee" (' 1.10) or facsimile transmission (' 1.6(d)) for the reply to be accorded the earliest possible filing date for patent term adjustment

Adjustment calculation 01/27/2006 SDIRETA1
01/27/2006 LWONDIM1 00000017 503368 10775862
01 FC:1453 1500.00 CR

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- ☐ **OTHER:** _____

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